

To: CN=Karen Schwinn/OU=R9/O=USEPA/C=US@EPA[]
Cc: CN=Tom Hagler/OU=R9/O=USEPA/C=US@EPA[]
From: CN=Erin Foresman/OU=R9/O=USEPA/C=US
Sent: Mon 10/17/2011 5:09:26 PM
Subject: 404/408 timeline for BDCP

Hi Karen and Tom,

Karen had asked me to pull together information about how long it may take to get a 404 permit for the delta conveyance pipeline & intakes. I talked to Mike N and other Corps staff and it turns out that is a difficult question to answer because it depends so much on how much information the applicant has provided to the Corps. A "complete application" starts a clock on the Corps to issue a permit within their service goal which is 120 days, including a consult with FWS on Section 7 ESA. It is important to note that a complete application does not include an alternatives analysis, mitigation plan, or even a verified JD (it can be a preliminary JD).

ESA consultation is a minimum of 135 days with FWS for Section 7; there isn't a clock for NMFS ESA Section 7 consultation. The FWS ESA clock starts when FWS determines it has enough information to make a decision. As you can imagine, this part can be lengthy if the applicant does not have information FWS and/or NMFS needs and is asked to get it.

I have observed a difficult CWA JD take more than a year to verify. DWR could speed this process up by doing the preliminary JD process which would essentially mean they accept the Corps opinion on what is JD. The Corps will have a difficult time writing a decision document and a permit without information on alternatives (obviously). If the application is complete but does not contain information about alternatives and their impacts then the process can be open-ended, until the applicant provides the information. Similarly, the mitigation regulations in 404b1 require the compensatory mitigation plan to be approved by the Corps before issuing a permit (for IPs not NWP's). This could also take a while if the applicant is not submitting a plan or is not willing to make changes as the Corps requests.

Another timeline element worth discussing is 408. At last week's 404 meeting, Paul Robershotte mentioned that it would take maybe 18 months from 65% engineering design to get through 408, assuming they have 100% engineering design at the end. Chuck Gardner and Cassandra Enos exchanged some thoughts on whether or not the contractors could get to 65% engineering design (the threshold for applying to the 408 program for permission to alter a Corps levee) by ROD. Cassandra Enos said that DWR basically didn't think they would be there by ROD and Gardner said that is not a foregone conclusion, that if the S&FWCs like what they see they could prioritize funding to get that piece done by the ROD. Cassandra said later the date for signing the ROD has been adjusted to March 2013.

ROD signed March 31, 2013, 65% design available, 408 application submitted.
18 month permit period = October 31, 2014 for final 408, perhaps 404
DSC Delta Plan V 5.0 -- SWRCB should adopt new flow objectives for the Delta by June 2, 2014.

Erin Foresman
Environmental Scientist & Policy Coordinator,
US EPA Region 9 C/O Army Corps of Engineers
650 Capitol Mall Suite 5-200, Sacramento, CA 95814
Phone: (916) 557 5253, Fax: (916) 930 9506

<http://www.epa.gov/region9/water/watershed/sfbay-delta/index.html>